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29989 7590 06/12/2008 HICKMAN PALERMO TRUONG & BECKER, LLP 2055 GATEWAY PLACE SUITE 550 SAN JOSE, CA 95110				
EXAMINER				
CHIANG, JUNGWON				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/636,144

Applicant(s)

COVERDILL ET AL.

Examiner

JUNGWON CHANG

Art Unit

2154

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-12,14-19 and 21-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-12,14-19 and 21-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to RCE filed on 5/15/08. Claims 6, 13, 20 have been canceled.
2. Claims 1-5, 7-12, 14-19 and 21-61 are presented for examination.
3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/15/08 has been entered.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1-5, 7, 10-12, 14, 26-30, 34-40, 44-50 and 54-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al. (US 2002/0169861), hereinafter Chang, in view of Moriarty (US 7,124,173), further in view of Klassen et al, (US

6,711,137), hereinafter Klassen.

6. As to claims 1, 12 and 14, Chang discloses the invention as claimed, including a method for monitoring the availability of resources in a network (page 1, 0002), comprising the computer implemented steps of:

receiving an activity announcement *message* from a node in the network (page 3, 0049, "periodically sends heart beat messages");

determining that the node is potentially inactive if no successive activity announcement *message* is received from the node within a specified first time period (page 7, claim 9, "potentially failed node");

determining that the node is inactive if no successive activity announcement *message* is received from the node within a specified second time period (page 4, 0064, "a grace period is established...adapter finally declared dead"; page 8, claim 16); and

detecting that the node or a connection to the node is active if an activity announcement *message* is received from the node within the specified first time period (page 4, 0059, "when no heart beat messages are received for a predetermined period of time"; 0064, "if the remote node and adapter are alive, then...replies with an ICMP echo-reply message").

7. Chang discloses activity announcement *message*. However, Chang does not specifically disclose activity announcement packet. Moriarty discloses activity announcement packet (fig. 2; col. 7, lines 26-39 and 59-65). It would have been obvious

to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang and Moriarty because Moriarty's activity announcement packet would improve the quality of service by using the information within the packet in order to determine the activity between a sender and a recipient (Moriarty; col. 4, lines 35-38; col. 7, lines 26-39).

Chang does not specifically disclose the activity announcement packet does not require a response. However, Klassen discloses the activity announcement packet does not require a response (130, fig. 4, "unidirectional pings"; col. 1, lines 52-63, "one way pings"; col. 4, lines 36-38, "one-way ping"; col. 6, lines 1-9; col. 9, line 64 – col. 10, line 5, "unidirectional, i.e., non-echoed, pings"). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang and Klassen because Klassen's unidirectional pings would reduce network traffic by without waiting for echo reply, as taught by Klassen (col. 10, lines 3-5, "unidirectional, non-echoed, pings").

8. As to claim 2, Chang discloses a method as recited in Claim 1, wherein the determining steps comprise the steps of:

initiating a first timer when the activity announcement *message* is received from the node (page 7, claim 9); and

initiating a second timer if no activity announcement *message* from the node is received again within expiration of the first timer (page 4, 0064; page 8, claim 16).

9. As to claim 3, Chang discloses a method as recited in Claim 1, further comprising the steps of:

 sending an activity verification message to a node that has been determined to be inactive (page 3, 0049, "periodically sends heart beat messages");

 determining that the node is active if a response packet from the node is received within expiration of a specified verification timer (page 4, 0059, 0064).

10. As to claim 4, Chang discloses a method as recited in Claim 2, wherein a first time duration associated with the first timer and a second time duration associated with the second timer are configurable (page 4, 0059, "predefined period of time"; page 4, 0064, "grace period").

11. As to claim 5, Chang discloses a method as recited in Claim 1, wherein the specified first time and the specified second time are configurable (page 4, 0059, "predefined period of time"; page 4, 0064, "grace period").

12. As to claim 7, Chang discloses a method as recited in Claim 1, further comprising the step of tracking nodes from which activity announcement messages have been received by an index comprising address and connection status information for each such node (page 5, 0074 – page 6, 0075).

13. As to claim 10, it is rejected for the same reasons set forth in claim 1 above.

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14. As to claim 11, Chang discloses a method as recited in Claim 1, further comprising the step of receiving network performance data, relating to the node, in association with the activity announcement message (page 5, 0074 – page 6, 0075).
15. As to claim 26, it is rejected for the same reasons set forth in claim 1 above.
16. As to claim 27, it is rejected for the same reasons set forth in claim 2 above.
17. As to claim 28, it is rejected for the same reasons set forth in claim 3 above.
18. As to claim 29, it is rejected for the same reasons set forth in claim 4 above.
19. As to claim 30, it is rejected for the same reasons set forth in claim 5 above.
20. As to claim 34, it is rejected for the same reasons set forth in claim 10 above.
21. As to claim 35, it is rejected for the same reasons set forth in claim 11 above.
22. As to claim 36, it is rejected for the same reasons set forth in claim 1 above. In addition, Chang discloses a processor; and one or more stored sequences of instructions that are accessible to the processor and which, when executed by the processor, cause the processor to carry out the steps (page 8, claim 18).

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23. As to claim 37, it is rejected for the same reasons set forth in claim 2 above.
24. As to claim 38, it is rejected for the same reasons set forth in claim 3 above.
25. As to claim 39, it is rejected for the same reasons set forth in claim 4 above.
26. As to claim 40, it is rejected for the same reasons set forth in claim 5 above.
27. As to claim 44, it is rejected for the same reasons set forth in claim 10 above.
28. As to claim 45, it is rejected for the same reasons set forth in claim 11 above.
29. As to claim 46, it is rejected for the same reasons set forth in claim 1 above. In addition, Chang discloses a computer storage readable medium carrying one or more sequences of instructions for monitoring the availability of network resources, wherein the execution of the one or more sequence of instructions by one or more processors causes the one or more processors to perform the steps (page 8, claim 18).
30. As to claim 47, it is rejected for the same reasons set forth in claim 2 above.
31. As to claim 48, it is rejected for the same reasons set forth in claim 3 above.

32. As to claim 49, it is rejected for the same reasons set forth in claim 4 above.
33. As to claim 50, it is rejected for the same reasons set forth in claim 5 above.
34. As to claim 54, it is rejected for the same reasons set forth in claim 10 above.
35. As to claim 55, it is rejected for the same reasons set forth in claim 11 above.
36. As to claim 56, Chang does not specifically disclose configuring a destination address to which a node sends the activity announcement packets. Moriarty discloses configuring a destination address to which a node sends the activity announcement packets (fig. 2; col. 7, lines 10-39, "destination address"). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang and Moriarty because Moriarty's destination address would transmit the activity announcement packets to the intended destination node (col. 7, lines 10-39, "destination address").
37. As to claim 57, Chang discloses configuring an interval by which a node sends successive activity announcement messages (page 4, 0059, "predefined period of time").
38. As to claim 58, Chang discloses formatting the activity announcement messages

(page 3, 0043, "ICMP echo request messages"; 0046-0047).

39. As to claim 59, Chang does not specifically disclose authenticating the activity announcement messages. Moriarty discloses authenticating the activity announcement messages (col. 8, lines 14-32, "firewall"; col. 9, lines 25-50). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang and Moriarty because Moriarty's authenticating the messages would improve the security of Chang's system, as taught by Moriarty (col. 10, lines 4-21).

40. As to claim 60, Chang discloses resetting the first and second timers (page 4, 0065, "reset to zero").

41. Claims 8, 9, 32, 33, 42, 43, 52 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang, Moriarty, Klassen, further in view of Haynes et al. (US 6,993,681), hereinafter Haynes.

42. As to claim 8, Chang does not specifically disclose displaying, in a management application, the connection status of the nodes that are tracked in the index. However, Haynes discloses displaying, in a management application, the connection status of the nodes that are tracked in the index (col. 14, line 31 – col. 15, line 27). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to

combine the teachings of Wang, Moriarty and Haynes because Haynes's displaying the connection status of the nodes would allow remote administration in distributed system (Haynes, col. 1, lines 6-8; col. 2, lines 21-32).

43. As to claim 9, Chang discloses a method as recited in Claim 8, further comprising the step of periodically removing from the index entries for nodes that have remained inactive for a specified amount of time (abstract, "node deletion").

44. As to claims 32, 42 and 52, they are rejected for the same reasons set forth in claim 8 above.

45. As to claims 33, 43 and 53, they are rejected for the same reasons set forth in claim 9 above.

46. Claims 15-21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang, in view of Moriarty, Klassen, Donzis et al. (US 6,976,071), hereinafter Donzis.

47. As to claim 15, Chang discloses a method for monitoring the availability of remote sites in a network (page 1, 0002), comprising the computer-implemented steps of:

receiving an activity announcement *message* from a router (network adapter) in

the network (page 3, 0049, "periodically sends heart beat messages");

determining that the router is potentially inactive if no successive activity announcement *message* is received from the node within a specified first time period (page 7, claim 9, "potentially failed node"); and

determining that the router is inactive if no successive activity announcement *message* is received from the node within a specified time period (page 4, 0064, "a grace period is established....adapter finally declared dead"; page 8, claim 16).

48. Chang discloses activity announcement *message*. However, Wang does not specifically disclose activity announcement packet. Moriarty discloses activity announcement packet (fig. 2; col. 7, lines 26-39 and 59-65). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Wang and Moriarty because Moriarty's activity announcement packet would improve the quality of service by using the information within the packet in order to determine the activity between a sender and a recipient (Moriarty; col. 4, lines 35-38; col. 7, lines 26-39).

Chang does not specifically disclose a virtual private network. Donzis discloses virtual private network (col. 1, lines 35-59). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Wang and Donzis because Donzis' VPN would provide communications protected by a security protocol (Donzis, col. 1, lines 35-59).

Chang does not specifically disclose the activity announcement packet does not require a response. However, Klassen discloses the activity announcement packet does not require a response (130, fig. 4, "unidirectional pings"; col. 1, lines 52-63, "one way pings"; col. 4, lines 36-38, "one-way ping"; col. 6, lines 1-9; col. 9, line 64 – col. 10, line 5, "unidirectional, i.e., non-echoed, pings"). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang and Klassen because Klassen's unidirectional pings would reduce network traffic by without waiting for echo reply, as taught by Klassen (col. 10, lines 3-5, "unidirectional, non-echoed, pings").

49. As to claim 16, Chang discloses a method as recited in Claim 15, wherein the determining steps comprise the steps of:

initiating a first timer when the activity announcement *message* is received from the router (page 7, claim 9); and

initiating a second timer if no activity announcement *message* from the router is received again within expiration of the first timer (page 4, 0064; page 8, claim 16).

50. As to claim 17, Chang discloses a method as recited in Claim 16, wherein the specified first time and the specified second time are configurable (page 4, 0059, "predefined period of time"; page 4, 0064, "grace period").

51. As to claims 18-21 and 23-25, Chang discloses determining that the router and

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the connection to said router is inactive if no activity announcement packet is received from the router is received after the first or second timer expires (page 4, 0064; page 5, 0074 – page 6, 0075).

52. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang, in view of Moriarty, Klassen, Donzis in view of Haynes et al. (US 6,993,681), hereinafter Haynes.

53. As to claim 22, Chang does not specifically disclose displaying, in a management application, the connection status of the nodes that are tracked in the index. However Haynes discloses displaying, in a management application, the connection status of the nodes that are tracked in the index (col. 14, line 31 – col. 15, line 27). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang, Moriarty, Donzis and Haynes because Haynes's displaying the connection status of the nodes would allow remote administration in distributed system (Haynes, col. 1, lines 6-8; col. 2, lines 21-32).

54. Claims 31, 41 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al. (US 2002/0169861), hereinafter Chang, in view of Moriarty (US 7,124,173), Klassen, Pandya (US 2003/0069962).

55. As to claims 31, 41 and 51, Chang does not specifically disclose index

comprising address and connection status information for each such node. Pandya discloses index comprising address and connection status information for each such node (page 1, 0009, "status signal has a disconnection signal"; page 2, 0017-0018; page 3, 0028-0030, "status signal that includes information that uniquely identifies each individual client...current connection status...uniquely identifies each client connected to the server"). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang and Pandya because Pandya's information would more accurately determine which clients are still connected to the server through the receive heartbeat message, as taught by Pandya (page 4, 0034).

56. Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al. (US 2002/0169861), hereinafter Chang, in view of Moriarty (US 7,124,173), Pandya (US 2003/0069962).

57. Chang discloses a method for monitoring the availability of resources in a network, comprising the computer-implemented steps of:

receiving an activity announcement *message* from a node in the network (page 3, 0049, "periodically sends heart beat messages");

determining that the node is potentially inactive if no successive activity announcement *message* is received from the node within a specified first time period (page 7, claim 9, "potentially failed node");

determining that the node is inactive if no successive activity announcement *message* is received from the node within a specified second time period (page 4, 0064, "a grace period is established...adapter finally declared dead"; page 8, claim 16); and tracking the nodes from which activity announcement packets have been received (page 4, 0059, "when no heart beat messages are received for a predetermined period of time"; 0064, "if the remote node and adapter are alive, then...replies with an ICMP echo-reply message").

58. Chang discloses activity announcement *message*. However, Wang does not specifically disclose activity announcement packet. Moriarty discloses activity announcement packet (fig. 2; col. 7, lines 26-39 and 59-65). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang and Moriarty because Moriarty's activity announcement packet would improve the quality of service by using the information within the packet in order to determine the activity between a sender and a recipient (Moriarty; col. 4, lines 35-38; col. 7, lines 26-39).

59. Chang does not specifically disclose index comprising address and connection status information for each such node. Pandya discloses index comprising address and connection status information for each such node (page 1, 0009, "status signal has a disconnection signal"; page 2, 0017-0018; page 3, 0028-0030, "status signal that includes information that uniquely identifies each individual client...current connection

status...uniquely identifies each client connected to the server"). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine the teachings of Chang and Pandya because Pandya's information would more accurately determine which clients are still connected to the server through the receive heartbeat message, as taught by Pandya (page 4, 0034).

Conclusion

60. Applicant's arguments filed 5/15/08 have been fully considered but they are not persuasive.

(1) Applicant asserts that Claim 1, as well as numerous others, recites, inter alia, use of an activity announcement packet. The claimed activity announcement packet is not disclosed or suggested in Chang or Moriarty. Moriarty's performance measurement packet is not related to activity announcements, and is instead directed to distance measurement and security metrics (Moriarty; col. 8, lines 1-14).

In response to Applicant's argument, the examiner maintains the rejection because claimed subject matter, not the specification is the measure of the invention. During patent examination, claims must be given their broadest reasonable interpretation and limitations from the specification may not be imputed to the claims. See *In re Zletz*, 892 F.2d 319, 13 USPQ2d 1320 (Fed.Cir.1989); *In re Self*, 671 F.2d 1344, 213 USPQ 1 (CCPA 1982); *In re Priest*, 199 USPQ 11, 15 (CCPA 1978).

Chang discloses a heartbeat or ICMP echo request, and ICMP echo response packets that are equivalent to the claimed activity announcement packet. The heartbeat

or ICMP echo request packet ICMP echo response packet of Chang is used to monitor network resource availability (Chang, figs. 7-9; page 3, 0043-0046; page 4, 0062-0065, "heart beat messages are sent...monitoring periodic...ICMP echo request packet is sent to the adapter being monitored"; page 5, 0067-0069). Therefore, Chang explicitly teaches or suggest the claim limitation.

Moriarty discloses a ping packet or ICMP echo request packet and ICMP echo response packet that are equivalent to the claimed activity announcement packet. The heartbeat or ICMP echo request packet ICMP echo response packet of Moriarty is used to monitor network resource availability (Moriarty, col. 1, lines 25-57 and 40-50, "ping packet"; col. 2, lines 12-22, "ICMP echo and echo reply packets").

(2) Claim 61 combines the subject matter of Claims 1 (as originally presented) and 7. Claim 61 recites, inter alia, "tracking node from which activity announcement packets have been received by an index comprising address and connection status information for each such node". This feature is not shown within Chang or any combination of prior art.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant fails to consider the Pandya's teaching of index comprising address

and connection status information for each such node. As stated in paragraphs 55-58, Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang, in view of Moriarty, Pandya. The examiner relies upon Pandya reference to teach index comprising address and connection status information for each such node (page 1, 0009, "status signal has a disconnection signal"; page 2, 0017-0018; page 3, 0028-0030, "status signal that includes information that uniquely identifies each individual client...current connection status...uniquely identifies each client connected to the server").

61. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Shimada, US 2004/0017814, Chan et al, US 6,885,641 disclose a method and apparatus for detecting network information.

62. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jungwon Chang whose telephone number is 571-272-3960. The examiner can normally be reached on 6:30-2:00 (Monday-Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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/Jungwon Chang/
Primary Examiner, Art Unit 2154
June 5, 2008